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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. ~~1434~~ 193

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION,

Petitioner,

v.

D. C. TRANSIT SYSTEM, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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The Washington Metropolitan Area Transit Commission, petitioner herein, respectfully prays that a writ of certiorari issue to review the final opinion of the United States Court of Appeals for the District of Columbia Circuit entered in this cause on March 7, 1967.

OPINIONS BELOW

The opinion of the Court of Appeals for which review is sought is reported in F.2d , U.S. App. D.C. , and is printed in the Appendix hereto, pp. A-1. The Court of Appeals reversed and set aside an opinion and order of the Washington Metropolitan Area Transit Commission (No. 581, dated March 25, 1966) which is reported in 65 P.U.R.3d 150, and is printed in the Appendix hereto, pp. A-9-26.

Judgment has been entered by the Court of Appeals; that court stayed the transmission of its mandate upon the motion of the Commission pending review by this Court.

JURISDICTION

The opinion of the Court of Appeals sought to be reviewed was dated and entered on March 7, 1967. Jurisdiction is conferred in this Court to review the judgment of the Court of Appeals by 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED FOR REVIEW

I

Whether the Court of Appeals violated basic principles of judicial review in its consideration of the Commission order?

II

Whether the Court of Appeals applied an improper standard in reviewing the Commission's order by going behind the certificates to consider the scope of the carriers' grandfather rights?

III

Whether, even if it was proper review, the Court of Appeals' conclusions as to the scope of the grandfather rights were erroneous?

IV

Whether the Court of Appeals erred by basing its ruling on a factual determination directly contrary to a Commission finding which was supported by substantial evidence?

STATUTES INVOLVED

Washington Metropolitan Area Transit Regulation Compact Act (1960), Public Law 86-794, 74 Stat. 1031, as amended, Public Law 87-767, 76 Stat. 764:

Article XII, Section 4(a) provides:

> No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; provided, however, that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

Article XII, Section 4(e) provides:

> The Commission may, if it finds that the public convenience and necessity so require, require any person subject to this Act to extend any existing service or provide any additional service over additional routes within the Metropolitan District, provided, however, that no certificate shall be issued to operate over the routes of any holder of a certificate until it shall be proved to the satisfaction of the Commission, after hearing, upon reasonable notice, that the service rendered by such certificate holder, over such route, is inadequate to the requirements of the public necessity and convenience; and provided further, if the Commission shall be

of opinion that the service rendered by such certificate holder over such routes is in any respect inadequate to the requirements of the public necessity and convenience, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy before any certificate shall be granted to operate over such route; and further provided that no person subject to this Act may be required to extend any existing service or provide any additional service over additional routes within the Metropolitan District unless the carrier is currently earning a reasonable return on its operation as a whole in performing transportation subject to this Act.

Article XII, Section 17(a) provides:

Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for the fourth circuit, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty (60) days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and con-

ditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The court may affirm or set aside any such order of the Commission, and state the reasons therefor, and such judgment shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in §§ 239 and 240 of the Judicial Code, as amended (U.S.C. Title 28, §§ 346 and 347).

STATEMENT OF THE CASE

This is an appeal from the opinion of the United States Court of Appeals for the District of Columbia Circuit setting aside an order of the Washington Metropolitan Area Transit Commission. As this is the first case involving the Commission which has been brought to the Supreme Court since the Commission's inception, a brief history of the law creating the Commission is deemed appropriate.

The Washington Metropolitan Area Transit Commission (hereinafter called the Commission) was created under the terms of a transit regulation compact entered into by the states of Maryland and Virginia and by the District of Columbia.

Washington Metropolitan Area Transit Regulation Compact Act (1960), Public Law 86-794, 74 Stat. 1031, as amended, Public Law 87-767, 76 Stat. 764.

Prior to the execution of the compact, authority to regulate mass transit service in the Washington metropolitan area had been divided among Virginia, Maryland, the District of Columbia, and the Interstate Commerce Commission. One of the steps taken by Congress was the authorization of negotiations between the District of Columbia, Maryland, and Virginia of the terms of a Washington metropolitan area

mass transit compact. National Capital Transportation Act of 1960, Title III, § 301, 40 USCA § 671. As the possibility of such a compact had been long under consideration, negotiations proceeded apace, and before the end of 1960 Congress was able to give consent and approval to its terms. Washington Metropolitan Area Transit Regulation Compact Act, Public Law 86-794, 74 Stat. 1031 (1960), amended, Public Law 87-767, 76 Stat. 764 (1962). The Commission officially began operations on March 22, 1961, and, as provided by Article XII, Section 4(a) of the Compact, issued "grandfather" certificates to all of the carriers involved in this proceeding.

Accompanying the National Capital Transportation Act of 1960 was the report of the House Committee on the District of Columbia, US Code Cong. & Adm. News, 86th Cong., 2d Sess., 1960, p. 3212. This report makes it clear that one of the main problems sought to be alleviated by the approval of a mass transit compact was the area's steadily worsening traffic congestion caused by the rapidly increasing use of private automobiles on the highways of the metropolitan area. Further, it is clear that the Compact was enacted so that it would be possible to deal with the problems of mass transportation on an areawide basis and to effect improvements which would not be possible if problems were viewed by each separate jurisdiction on a narrow, parochial basis.

With this background in mind we can turn to the facts of the instant proceeding.

The proceeding involved an attempt by the Commission to effect basic improvements in the mass transportation service available to residents of the metropolitan area. Specifically, the Commission concerned itself with the fact that for many years bus service for riders from certain areas of suburban Maryland and Virginia had terminated in the vicinity of 11th and 12th Streets and Pennsylvania Avenue, northwest. Meanwhile, in the past few years the area surrounding Farragut Square, at Connecticut Avenue and K Street, northwest, had become a major employment center, with a high

concentration of large office buildings. To make mass transportation more attractive, the Commission instituted a proceeding to determine whether some portion of the service from the suburbs should terminate at Farragut Square, rather than at Twelfth Street and Pennsylvania Avenue.

Put in its simplest form, the basic issue before the Commission was the subsequent construction by the Commission of the grandfather certificates it had previously issued to the two suburban bus companies, which provided the service in question.

On March 25, 1966, the Commission issued its Order No. 581, in which it directed the A. B. & W. Transit Company ("A. B. & W.") and the WMA Transit Company ("WMA") to extend their regular route service between Virginia and Maryland, on the one hand, and the District of Columbia on the other, in the District of Columbia.

The issuance of the Order followed extensive hearings. The proceeding was investigative in nature, based on a recommendation of the Commission's Staff, to determine whether (1) the two carriers had the requisite operating authority to render the service, and (2) there was a need for the service to be rendered. The Staff, WMA, and A. B. & W. contended that the certificates of public convenience and necessity of the two carriers did authorize the service. D. C. Transit System, Inc. ("D. C. Transit"), an intervenor in the proceeding, took a contrary view. The Staff and WMA also contended that the extended interstate service was needed. A. B. & W. opposed the proposal solely on the ground that the extended service was economically unfeasible. D. C. Transit objected on the grounds that it would be substantially injured financially, and that the provisions of Section 4 (e) of the Compact had not been followed. It also raised an evidentiary issue, not discussed by the Court in its subsequent opinion.

In its Order, the Commission made numerous findings, including the following which are significant to the issues raised in this Petition:

1. The certificates of public convenience and necessity of A. B. & W. and WMA authorized the interstate transportation of persons in regular route operations between Washington, D. C. and its suburban environs of Virginia and Maryland;

2. The plain language of the certificates placed no terminal restrictions on those carriers in the District of Columbia, and, therefore, the carriers were authorized to operate regular route *interstate* service to and from a terminal in the area of 18th and L Streets;

3. The proposed service would not have a substantial economic effect on D. C. Transit;

4. One of the basic purposes for the creation of this Commission was to provide for the improvement of mass transit and alleviation of traffic congestion without regard to political boundaries, and the decision of the Commission helped to accomplish this basic purpose;

5. The proposed service is not competitive with D. C. Transit's service, the former being interstate in nature and the latter being intrastate in nature, but, even if the service were competitive, the certificates as written do authorize the extended service; and

6. The proposed transportation was in the public interest.

Based on these salient findings, the Commission directed WMA and A. B. & W. to extend their interstate mass transit service in the District of Columbia to a terminal area at 18th and L Streets, N. W.

Transit sought review of the order in the United States Court of Appeals for the District of Columbia Circuit, under the provisions of Section 17(a) of the Compact.

On March 7, 1967, that Court entered its opinion and order, setting aside the Commission order on the grounds (1) that the certificates could not – and do not purport to – authorize the interstate regular route service beyond a terminal at 11th & 12th Streets and Pennsylvania Avenue, N. W., in the District of Columbia; (2) that prior to the Compact, A. B. & W. and WMA had no authority beyond these points;

(3) that section 4(e) was applicable and was not followed; (4) that the extensions were "competitive" with D. C. Transit's service; and (5) that "there is no serious dispute here that the route extensions will have a substantial financial impact upon [D. C.] Transit."

REASONS FOR GRANTING THE WRIT

I

The Decision of the Court of Appeals Is in Conflict With Nelson, Inc. v. United States, 355 U.S. 554 (1958), and Other Applicable Decisions of This Court and of the U. S. Court of Appeals for the Fourth Circuit.

A. The Court of Appeals Went Beyond the Plain Language of the Commission's Certificates of Convenience and Necessity. In So Doing, the Court Violated Basic Principles of Judicial Review.

Normal principles of judicial review dictate that great weight must be given to a Commission's interpretation of its own rulings. *Norwegian Nitrogen Products Co. v. United States,* 288 U.S. 294, 315 (1933). See also *United States v. Atlantic Refining Co.,* 360 U.S. 19, 24 (1959); *United States v. Zucca,* 351 U.S. 91, 96 (1956); *Mintz v. Baldwin,* 289 U.S. 346, 351 (1933); *Fawcus Machine Co. v. United States,* 282 U.S. 375, 378 (1931); *Heath v. Wallace,* 138 U.S. 573, 582 (1891); *Hastings & D. R. Co. v. Whitney,* 132 U.S. 357, 366 (1889); *United States v. Johnston,* 124 U.S. 236, 253 (1888), cases there cited. The requirements in this regard are even more stringent in the case of interpretations of certificates of convenience and necessity. Commission rulings on such certificate can be overturned only if they are arbitrary, capricious or clearly erroneous. *Nelson, Inc. v. United States,* 355 U.S. 554, 558; *Kroblin Refrigerated Express, Inc. v. United States,* D.C. Iowa 1961, 197 F. Supp. 39; *Bind Trucking Co. v. United States,* D.C.Wisc. (1955), 159 F.Supp. 717. This principle has been recognized in cases involving this very Commission before the Court of Appeals for the

Fourth Circuit. "That the Commission is the final interpreter of its own orders is no longer debatable. *Nelson, Inc. v. United States,* 355 U.S. 554, 557-558." *D. C. Transit, System, Inc. v. Washington Metropolitan Area Transit Commission,* 366 F.2d 542 (4th Cir. 1966).

The Court of Appeals neither stated that the Commission's ruling was arbitrary, capricious, or clearly erroneous, nor spelled out any theory why this might be the case. In fact, as will appear *infra,* the Court of Appeals applied an improper standard in reviewing the Commission's order.

The propriety of the Commission's ruling must be tested by the language of the certificates. It is not proper to go behind that language in ruling upon their scope.

Thus, in the *Nelson* case, the Supreme Court considered the I.C.C.'s interpretation of a grandfather certificate which that Commission had issued. The Court began its review of the Commission's ruling by stating:

> In ascertaining that meaning, we are not given *carte blanche;* just as '[t]he precise delineation of an interprise which seeks the protection of the grandfather clause has been reserved for the Commission' . . ., *subsequent construction of the grandfather permit by the Commission is controlling on the courts unless clearly erroneous.* 355 U.S. at 558. (Emphasis supplied)

The Court then dealt with the argument that it should look to the scope of the actual grandfather operation. It said:

> If this be so, the remedy lies elsewhere; in the event the grandfather permit does not correctly reflect the scope of the grandfather operation, the carrier's recourse is to petition the Commission to reopen the grandfather proceedings for consideration of the evidence not previously brought to the Commission's attention. 355 U.S. at 561, 562.

In other words, the language of the certificate as issued was controlling and the Court would not go behind that language in reviewing the Commission's interpretation thereof.

Thus, neither the parties, the Commission, nor the Court had the right in this proceeding to go behind the certificate and question the Commission's right to issue it in the terms used.

Similarly in *Sims Motor Transport Lines, Inc. v. United States,* 183 F. Supp. 133 (N.D. Ill. 1959), a three judge court reviewing an I.C.C. ruling on the scope of a certificate said:

> . . . [I]f plaintiff believes that the scope of his certificate is too restrictive when considered against its background, his remedy is to petition the Commission to reopen the grandfather proceedings. *Nelson v. United States,* supra, at pages 561, 562. This proceeding is concerned only with the interpretation of the certificate as it now exists.

It is apparent that in the present proceedings the Court of Appeals failed to accord the Commission's ruling responsible review under the above-stated standards. Under those standards, the Court should have considered the language of the certificates.

The Commission, in its Order, set forth the pertinent portions of the A. B. & W. and WMA certificates. Order No. 581, p. 6. The WMA certificate, for example, authorizes regular route operations "[b]etween Washington, D. C., and points in Maryland; and between points in Maryland, serving all intermediate points; restricted, however, against the transportation of intrastate passengers in the District of Columbia." At this juncture, nothing on the face of the certificate would act as a limitation on the carriers to render interstate service from Maryland to the extended terminal at 18th and L Streets.

The certificate continued: "Route No. 1 From Washington, D. C. over city streets to Southern Avenue, thence over Business Route 4, . . ." Again, no language of limitation appears on the face of the certificate.

Moreover, the Commission is not alone in its reading of these certificates. The Commission compared the language

of its certificates with the language of the carriers' Interstate Commerce Commission certificates, and *found* that in not designating specific streets within the District of Columbia, "this Commission clearly followed the procedure of the I.C.C." Order No. 581, p. 6. This Commission discussed I.C.C. cases interpreting their certificates, which revealed that ". . . where the streets within a municipality have not been designated by us, and we have authorized operations over city streets, it seems clear that the carrier is authorized to operate over any city street within the municipality . . ." *Hudson Bus Transportation Co., Inc. Passenger Service,* 5 Fed. Car. Cas. 31, 197 (1946). Also, in *A. B. & W. Transit Company Extension of Operation—Washington National Airport,* the I.C.C. held: "Applicant's right to operate over any public highway or street within the municipal limits of Alexandria, subject to all lawful requirements of that city, could not well be questioned by anyone." 30 M.C.C. 618, at page 620.

Based on the language of its own certificates and the concurring interpretation by the I.C.C. of identical language in certificates issued by that Commission, the Transit Commission *found* that it could ". . . only conclude that the certificates held by A. B. & W. and WMA already authorize the proposed service extensions." Order No. 581, p. 8. Nevertheless, the Court of Appeals said that the certificates "do not purport to" authorize the proposed service. Significantly, and we feel improperly, the Court arrived at this conclusion *without any analysis of the language of the certificates.* Therefore, the Commission contends that the Court of Appeals erred in failing to follow the principles of judicial review cited previously, which require that the rights of the carrier be determined by the language of the certificate and, further, that the Commission's interpretation of the language of the certificates be sustained unless it is arbitrary or clearly erroneous. Here, the Commission's reading of the language was not only not arbitrary and capricious, it was the only reading which could possibly be made. The Court over-

turned that interpretation only by ignoring it and looking beyond the plain language of the certificates.

B. The Court's Ruling on the Scope of the Certificate Was Based on Its View of the Actual "Grandfather" Operation. It Was Improper To Consider That Operation in This Proceeding.

We have previously pointed out that the Court did not base its ruling as to the scope of the certificates on the language of those certificates. Rather, the Court resolved the question by an independent determination of the "grandfather" rights of the two carriers. Thus, the Court stated that the grandfather certificates "could cover no more" than transportation to 11th Street and Pennsylvania Avenue.

The Court then went on to state ". . . that A. B. & W. and WMA originally received the authority to traverse certain streets from the District line to the terminal points at 11th and 12th Streets and Pennsylvania Avenue. *Prior to the Compact, they had no authority to extend their operations beyond these points.*" (Emphasis added) We point out to this Court that such a finding could only be made upon a re-opening and *complete* reconsideration of the grandfather application, because there is nothing in the certificates to support such a finding.

The validity of the "grandfather" orders granting the certificates was not directly assailed in the administrative proceeding and was not litigated before the Commission. Hence, it was not reviewable before the Court of Appeals, and it was error for that Court to do so. This is an impermissible attempt to attack the original orders collaterally. If their validity is to be questioned, it can be accomplished only by reopening the proceeding wherein such orders issued. *Nelson, Inc. v. United States, supra,* 355 U.S. 554, 561-562. *D. C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission,* 366 F.2d 542 (1966).

It would have been improper for the Commission, in the instant proceeding, to go behind the certificates and show that the A. B. & W. and WMA operating authorities prior to

the Compact were different than those set out in their certificates, even if it could. In short, this would amount to a collateral attack upon the certificates, which is prohibited. *Callahan Road Improvement Co. v. United States*, 345 U.S. 507 (1953), *rehearing den.*, 345 U.S. 978 (1953). If the Commission is so estopped, the prohibition would extend to the Court of Appeals.

Indeed, the law appears to be that one cannot go behind the certificate for any purpose unless an ambiguity appears, and then only to resolve the ambiguous language. The Court of Appeals has not disclosed an ambiguity in the certificates. In fact, the Court's opinion is devoid of any discussion of the language of the certificates whatsoever. Thus, the review accorded the Commission Order by that court is in direct conflict with applicable principles of law laid down by this Court, and followed by the Court of Appeals for the Fourth Circuit in cases directed in point with this case.

C. Even if It Were Proper To Go Behind the Certificate, the Court's Conclusion as to the Scope of the Grandfather Rights Cannot Be Sustained.

Assuming that, despite the clear rulings to the contrary in *Nelson* and the other cases cited in the preceding sections, the Court of Appeals was justified in going beyond the plain language of the Commission's certificates, that court's action was nonetheless wholly unjustifiable. The Court of Appeals stated that the rights granted in the "grandfather" certificate must have been limited to Twelfth and Pennsylvania Avenue, N. W. since this was the extent of actual – rather than potential – operations prior to issuance of the certificate. It further said that the certificates could grant no more and purported to grant no more. The latter statement is patently inaccurate since, as previously discussed, the certificate certainly purported to grant substantially more than the limited right to operate to Twelfth and Pennsylvania Avenue, N. W. The statement that the Commission *could* grant no more is equally inaccurate.

In its collateral attack upon the Commission's certificates, the Court of Appeals felt that the District of Columbia Public Utilities Commission could and did modify or restrict the interstate operating authority granted by the Interstate Commerce Commission. Apparently mistaking the right of that Commission, operating in conjunction with the District of Columbia Commissioners via a joint board, to control such interstate operations only as to general safety regulations for control of streets, the Court assumes that the carriers "had no authority" to extend their operations beyond the original terminal point, because restricted thereto by the District of Columbia Commission. In fact, orders of that Commission, submitted as evidence, clearly reveal that they were related to "use of streets" regulation rather than a limitation on the carriers' interstate operating authority.

The right of a jurisdiction, such as a city, to promulgate general safety regulations is quite distinct from the power to determine who may engage in interstate commerce and the extent to which such interstate commerce may penetrate into a city. Both the Interstate Commerce Act and the Compact gives the regulatory agency the discretion to determine the extent of such interstate commerce. See this Court's opinion in *Railroad Transfer Service, Inc. v. City of Chicago, et al.*, U.S. (1967), wherein this Court prohibited the City of Chicago from enacting ordinances interfering with interstate commerce.

In granting the broader rights found to exist in Order No. 581, the Commission was clearly within its powers. In Order No. 581, the Commission discussed the terms of the predecessor certificates. The Commission pointed out that those certificates included no restrictions on the rights of the carriers to serve any area of Washington, D. C. Order No. 581, p. 5. The Commission further pointed out that the authorities which had issued those certificates had ruled in various cases that route extensions within the city named in their certificate did not constitute a change in the certificate. Order No. 581. pp. 5-8. Thus, the Commission's discussion of the background of the certificates it issued reveals, *prima*

facie, that the carriers were not limited, under their predecessor certificates, to a terminal at Twelfth and Pennsylvania Avenue, N. W. Having pointed out these facts, the Commission held that the rights granted by its certificate included the right to the route extensions here in question. The Commission's ruling on this point is entitled to great weight and may be overturned only if it is arbitrary and capricious. See cases cited *supra*. The Commission's ruling was supported by a careful consideration of the predecessor certificates and rulings of the authorities which issued those certificates. The Commission's view can hardly be considered an arbitrary or capricious one. Nor is it clearly in error. Yet the Court of Appeals casually cast it aside, without discussion, on the erroneous theory that the actual operations prior to issuance of the certificate are the limiting factor. This was an obvious violation of the principles applicable to judicial review.

D. The Court's Ruling Was Based on a Factual Determination Directly Contrary to a Commission Finding Which Was Supported by Substantial Evidence. This Was a Violation of Basic Principles of Review.

The Court stated that "[t]here is no serious dispute here that the route extension order will have a substantial financial impact upon Transit." This "finding" of the Court is completely contrary to the Commission's determination that "[i]t is the Commission's considered judgment that there will be no substantial economic effect upon D. C. Transit if the proposed transportation is performed." Order No. 581, p. 12.

The test on judicial review is, of course, whether the finding of the Commission is supported by substantial evidence on the record viewed as a whole; if it is, the finding is conclusive. Section 17(a), Article XII, Compact (74 Stat. 1046). It is not for the Court to strike down conclusions that are reasonably drawn from the evidence and findings. Its duty is to determine whether the evidence supporting the Com-

mission's findings is substantial. *Universal Camera Corp. v. National Labor Relations Board,* 340 U.S. 474 (1945). Consideration of the weight and value of the evidence and the inferences to be drawn therefrom are matters for the Commission alone. *New England Divisions case,* 261 U.S. 184, 204; *ICC v. Union Pacific R. R.,* 222 U.S. 541, 547.

The Commission's finding as to the impact on D. C. Transit is clearly supported by substantial evidence. The Commission conducted an extensive survey, described at pp. 8 et seq. of Order No. 581, in an attempt to determine, among other things, the impact of the proposed changes. That survey revealed that 1413 out of 5166 persons who presently ride the bus and who responded to the survey would use the extended service. Not all of those 1413 persons use interline tickets. Yet D. C. Transit's claim of substantial impact was based on the contention of its witness that D. C. Transit would lose all interline ticket sales. The Commission specifically rejected this contention. Order No. 581, p. 12. The contention is, first of all, unacceptable on its face. It presupposes that all interline ticket sales originate in or terminate in the 18th and L Street area. Yet, the D. C. Transit witness said he did not know how many interline passengers originate or terminate in that area. However, a staff witness testified that thousands of riders use an interline ticket between the Pentagon and the District of Columbia, and in his opinion very few of these riders were destined to, or originate from, the 18th and L Streets area. Moreover, the D. C. Transit contention was, in the Commission's view, contradicted by the results of the survey discussed above. The Commission's rejection of D. C. Transit's contention clearly had support in the record.

Additionally, based on the testimony of experts of the large development of the employee population in the 18th and L Area, the Commission found that the extended service would draw car riders to the buses in such large numbers that "a substantial number of automobiles may be eliminated from the downtown area, which will be of direct economic benefit to D. C. Transit." Order No. 581, p. 12. See also

the summary of testimony of witnesses Hansen and Kesler, at page 11 of the Order.

Thus, the substantial evidence rule was completely ignored by the Court. The Court of Appeals made a factual statement directly contrary to a Commission finding and footnoted, in support thereof, a reference to certain testimony which was characterized by the Commission as based on a premise that ". . . is not only contrary to the record, but is invalid on its face." Order No. 581, p. 12. The Commissions's factual determination is clearly supported by evidence which was discussed in Order No. 581. The Court of Appeals did not even trouble to discuss whether the Commission's finding is supported by substantial evidence. It merely pulled from the record testimony rejected by the Commission and used it as the basis for a factual assertion. Such action on review is contrary to the most fundamental principles of administrative law and should be overturned by this Court.

The foregoing discussion highlights the basic error in the Court of Appeals' approach to this proceeding. The Commission, early in its decision, recognized that the initial and critical question revolved around the *existing* authority possessed by A. B. & W. and WMA. If the certificate – as written – authorized the extension, no further grant of certificate of authority was needed. If the certificates as written did not authorize the extended service, but did in fact restrict the interstate operations to the existing terminal, then a public convenience and necessity proceeding would be required, and Transit Commission then, and only then, could and must invoke Sec. 4(e), which statutory provision is applicable only in a public convenience and necessity proceeding.

The Commission looked to the language of the certificates and found that they authorized the extensions. The Court of Appeals ignored the certificates and embarked on a collateral and *de novo* consideration of the grandfather rights of those carriers. In so doing, the Court violated basic principles of judicial review.

II

The Instant Action Is Appropriate for the Invocation of This Court's Consideration, for There Are Special and Important Reasons Therefor.

It would be difficult to conceive of a decision more detrimental to the basic objectives of the Commission's regulatory efforts than the Court of Appeals' denial of the route extensions granted in Order No. 581. The Commission's action effected basic improvements in mass transportation in the metropolitan area. It was designed to, and did, draw very substantial numbers of persons away from use of their automobiles and onto mass transit, thus contributing materially to alleviation of traffic conditions. It improved transit service significantly for a number of persons already using mass transit. Many, many basic personal decisions on such matters as where to live, where to work, and the purchase and sale of automobiles and homes have been made on the basis of the route extension. It is self-evident that abandonment of these extensions will mean hardship and inconvenience to substantial numbers of persons.

Of course, if the Commission was in error on matters of substance or procedure in granting the extensions, the hardships engendered by the Court's decision are a matter of unavoidable necessity at this juncture. However, consideration of the record reveals that the Commission held extensive hearings and fully considered all aspects of its action. The discussion *supra* demonstrates that the Court of Appeals applied the wrong standards on matters of law in its review of the Commission's Order. Perhaps more seriously, it was

based on a factual conclusion directly contrary to a Commission finding fully discussed in the Order and fully supported in the record. This is a matter which richly deserve the attention of this Court. It would be tragic if the public were denied the basic improvements in mass transportation made possibly by the Commission's action merely because the Court of Appeals relied on testimony which the Commission, who heard the witness and evaluated the evidence in the light of other expertise, rejected.

It is submitted that the Court's decision is erroneous for the foregoing reasons, and therefore this petition for certiorari should be granted.

CONCLUSION

WHEREFORE, petitioner prays that certiorari be granted to review the opinion and order below.

Respectfully submitted,

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